

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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GORDON HEMPTON,	)	
	)	
Plaintiff,	)	
	)	
-v-	)	CAUSE NO.
	)	3:15-CV-05696-DWC
POND5, INC., A Delaware	)	
Corporation; and POND5 USER	)	
CKENNEDY342, A corporation of	)	
Individual of Type Unknown,	)	
	)	
Defendants.	)	

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DEPOSITION UPON ORAL EXAMINATION

OF

30(b)(6) THOMAS CRARY

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Taken at 1000 Second Avenue, Suite 3670

Seattle, Washington

DATE TAKEN: March 22, 2016

REPORTED BY: Nancy M. Kottenstette, RPR, CCR 3377

BUELL REALTIME REPORTING, LLC

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1 into the document. Tell me what is Pond5's general  
2 business model? You can describe it in your elevator  
3 speech.

4 A We're a digital media e-commerce platform. We  
5 refer to it as a two-sided marketplace business where  
6 contributors of digital media artwork can contribute  
7 their content onto our platform for storage, sale, and  
8 marketing of their digital media content.

9 And on the buyer's side, buyers can come to  
10 our site, search a comprehensive library of digital  
11 media works, find what they need to complete their  
12 creative projects.

13 Q When you use -- just so I'm comfortable with  
14 your terminology, when you refer to the two-sided  
15 marketplace, you refer to the one party on the one  
16 side as contributors?

17 A Yes.

18 Q And then the other side you refer to them as  
19 buyers?

20 A Yes.

21 Q And has the business model been, essentially,  
22 the same since Pond5's inception?

23 A Yes.

24 Q And how does the pricing work for digital  
25 media on your e-commerce platform?

1           A     Generally, our artists or contributors will  
2     set their own price for the works that they post onto  
3     the site.

4           Q     And are there any minimums or maximums that  
5     are imposed on contributors?

6           A     There are no maximums. There are some basic  
7     minimums to make sure things aren't too low.

8           Q     Is that a specific number, or is that  
9     something determined in the curatorial review?

10          A     They're specific numbers set by policy. I  
11     don't know them off the top of my head because it  
12     varies by each form of media.

13          Q     And for audio media, do you know the minimum  
14     price?

15          A     Within audio, there's music and there's sound  
16     effects. Are you referring to one or the other?

17          Q     I'm interested in both actually. Do you have  
18     a minimum price for music?

19          A     I remember the music one, I believe, is \$20.  
20     On sound effects, I believe it's 2, maybe 1, though.  
21     I'm not sure.

22          Q     And who determines the policy for the minimum  
23     price?

24          A     The executive team, I guess, I would say based  
25     on recommendation from the contenting. It's not

1 Q And how do you record assent to the terms of  
2 use?

3 A Basically, when you sign up with a username  
4 and password, there's a check box that says accepts  
5 Pond5's terms of use.

6 Q It says at the top that Pond5 may change the  
7 terms of service without notice. To your knowledge,  
8 have the terms of use changed during the course of  
9 your employment at Pond5?

10 A I don't believe so.

11 Q And is that also true of the content license  
12 agreement?

13 MR. ALTENBRUN: If you know.

14 A Yeah. It's been at least a year since any of  
15 the three agreements were revised. I don't remember  
16 exact dates of when each of them were revised. But,  
17 generally, probably on average two years old or so.

18 Q And then if I could draw your attention to  
19 page 2 document Bates marked Pond5 00137, do you see  
20 that?

21 A Yes.

22 Q I'd like to ask you about the evaluation  
23 license. How does the evaluation license work to your  
24 understanding?

25 A So, basically, as a registered user, you can

1 go on the site and preview any of the content with  
2 certain restrictions that both legally limit your  
3 ability to use it as well as functionally limit your  
4 ability to use it.

5 Q Okay. And, in particular, I'd like to ask  
6 about the functional limitations on use.

7 A Okay.

8 Q So what are the functional limitations on use  
9 of an evaluation?

10 A Lower resolution, so, you know, if it's a  
11 video file, for instance, or a photo, it doesn't have  
12 the full resolution. You can't see the highest level  
13 of detail, and then everything is watermarked, whether  
14 it be a photo that has the Pond5 logo embossed in  
15 there or a video, same thing. Or in the case of  
16 audio, I believe, every seven seconds-ish, there's a  
17 Pond5.com kind of harassing voice that's in the  
18 background.

19 Q Okay. And so is it -- is there also -- you  
20 mentioned lower resolution. Does that apply to only  
21 the video file or the photo; is that right?

22 A I believe so. I couldn't say for sure on the  
23 audio whether that's actually down converted or not.  
24 I'm not sure.

25 Q It's been our experience it remains high

1 quality, and then there's the video watermark --  
2 excuse me. The audio watermark.

3 Is the user able to download a copy of the  
4 file onto their digital media and it's in their  
5 control?

6 A Do you mean to download the previewed copy?

7 Q Yes. It's a bad question. So say someone  
8 goes to download a sound effects file, for example.

9 A Right.

10 Q Say it's the sound of waves.

11 A Right.

12 Q And they'll download a copy of -- for the  
13 evaluation license from the Pond5 website.

14 A Right.

15 Q Right?

16 A Yeah.

17 Q Do they pay any money for that?

18 A No.

19 Q Do you make a record of who's done that?

20 A We do track. That is a data attribute.

21 Q What does that mean?

22 A Meaning if someone plays the preview or  
23 downloads a preview, we do track the data usage.

24 Q When you say track the data usage, what data  
25 do you --

1 A That someone has downloaded it.

2 Q Do you know who has downloaded it?

3 A As a preview?

4 Q Yes.

5 A I'm saying we track it. I haven't looked up  
6 any particular attribute for any particular user.

7 Q I'm trying to determine what information you  
8 know and don't know.

9 A Off the top of my head -- and I don't even  
10 know which particular content we're talking about.  
11 Are we talking about Mr. Hempton's content? Are we  
12 talking about other stuff in general?

13 Q I'm particularly interested in the content  
14 that gets downloaded and the control that you exercise  
15 over that content and, in particular, an evaluation  
16 license at this line of inquiry. So go back to the  
17 example of let's say it's a .wav file, meaning a sound  
18 recording of waves.

19 A Got you.

20 Q And say it was originated from Mr. Hempton  
21 originally and then uploaded by a third party, for  
22 example. When that content is uploaded onto the Pond5  
23 marketplace and then a buyer comes and obtains an  
24 evaluation license, that's the example that I'm asking  
25 about right now.

1           So when a buyer comes and obtains an  
2   evaluation license, they then get a digital copy of  
3   the file; correct?

4                   MR. ALTENBRUN: Object to the form.

5       A    Yes. They have a digital copy of a .wav wave  
6   file with a harassing audio watermark.

7       Q    When you say ".wav wave," you mean .wav --

8       A    Yes.

9       Q    -- and the word "wave"?

10      A    Yes. Just making sure it's clear there are  
11   waves in both cases.

12      Q    I should have used a bird call. I'm going to  
13   switch my example to a bird call now for clarity of  
14   language.

15           So that user now has an evaluation copy of, in  
16   this hypothetical, Mr. Hempton's copyrighted recording  
17   of a bird call, and it also has that watermark every  
18   seven seconds, which says Pond5; right?

19      A    I believe so, yeah.

20      Q    That's kind of an English accent that comes  
21   over the license; right?

22      A    Yeah.

23                   MR. ALTENBRUN: Object to form.

24      A    I don't know if it's English, but it's  
25   American, I think.

1 Q And do you track of the buyers of an  
2 evaluation license their name, username?

3 MR. ALTENBRUN: Object to the form.

4 A Yes.

5 Q And do you track their IP addresses?

6 A We track, yes, what IP addresses they log in  
7 from, yes.

8 Q And do you track -- do you do any cookie  
9 tracking for that?

10 A If they allow us to put cookies on to their  
11 computer, then we do track a cookie.

12 Q And are there any other efforts to track or  
13 control evaluation licensed content?

14 MR. ALTENBRUN: Objection to form,  
15 calls for a legal conclusion.

16 A I don't know what you mean by control. We're  
17 just tracking data attributes passively.

18 Q Any other data attributes other than the ones  
19 you've described here? Are there any other data  
20 attributes you track?

21 MR. ALTENBRUN: Object to form.

22 A We track thousands of data attributes for  
23 every behavior that a customer would do on our website  
24 for the purposes of improving sales primarily.

25 Q Okay. So you're tracking things like --

1           A     Sure. Basically, you know, our website has  
2     some 20 million items of digital media. And when one  
3     is sold, for whatever price has been set by the  
4     artist, the artist gets their 50 percent share, and we  
5     take a 50 percent commission on the sale.

6           Q     Okay. And the 50 percent, is that net of your  
7     costs?

8           A     No. That is gross of costs.

9           Q     And if you could, describe to me a little bit  
10    about how the money flows through. So a user  
11    purchases content on the Pond5 system. Who collects  
12    the money from the buyer?

13          A     A third party intermediary. Typically, most  
14    purchases are done via credit card. So we have a  
15    payment processor that processes those payments, and  
16    we receive the gross amount three, four days later  
17    once it is cleared through the payment processor.

18          Q     Okay. What are the average credit card fees  
19    associated with those sales?

20                   MR. ALTENBRUN: Object to the form.

21          A     About 3 percent.

22          Q     So let's say a piece of content was sold for  
23    \$10. How much would you expect the contributor to  
24    receive of that?

25          A     They would receive 5.

1 Mr. Hassan Khan?

2 A We have not.

3 Q And have you been in contact with Mr. Khan  
4 regarding this lawsuit?

5 A No.

6 Q And why not? I caution you not to respond to  
7 me with your legal strategy what the lawyers have  
8 said.

9 A Why not?

10 MR. ALTENBRUN: Let me object because  
11 this is beyond the scope. You may answer if you don't  
12 disclose attorney-client privileged conversations.

13 A Sure. I mean, I think the only reason we have  
14 not is we don't believe it would be that effective in  
15 this case given where he's located and, you know, the  
16 fact that he has used aliases in the past. Certainly,  
17 something we could still do.

18 Q I'm going to ask you next about your  
19 curatorial review. Is that a term of art that's used  
20 within Pond5?

21 A Yeah.

22 Q What is curatorial review?

23 A It's a brief review of content that is  
24 submitted through the upload process to be put live on  
25 the site. It's a human review.

1 MR. ALTENBRUN: Objection. I think  
2 you've misstated his testimony.

3 Q Let me ask you this way: What efforts do the  
4 audio -- do the curatorial review team for audio  
5 undertake to recognize fraud?

6 A As of today?

7 Q Sure.

8 A So, I mean, the review process is two-fold.  
9 We do an artist identification process at the  
10 beginning of the relationship with an artist where we  
11 ask them to submit IDs, physical photo identification.  
12 And that process, while not part of the curatorial  
13 process per se, is part of the initial artist  
14 on-boarding experience. So to join that process where  
15 they have to submit valid photo identification with  
16 a -- meaning it has to be nonexpired. The name has to  
17 match the name on the account.

18 Q And when did you institute the artist  
19 identification review and particularly reviewing photo  
20 IDs?

21 A Last fall.

22 Q Can you be more specific?

23 A Probably late October, November.

24 Q Why did you institute that program?

25 A Partly in response to this particular incident

1 where, you know, we found an instance of someone using  
2 an alias that did not represent themselves. It was  
3 the first time we had ever come across this problem.

4 Q Well, you've come across claims of copyright  
5 infringement on your website before; correct?

6 A Yes.

7 Q So when you say it's the first time we've  
8 encountered this problem, what do you mean by that?

9 A Where someone has returned to the website  
10 using a false identity if, indeed, that's what they  
11 were doing.

12 Q Okay. And what other artist identification  
13 review do you do today other than the photo IDs?

14 A As part of the process, we do manually check  
15 for matches against our database on IP address and  
16 cookie ID.

17 Q Anything else?

18 MR. ALTENBRUN: Object to the form.

19 A I think that's pretty much it.

20 Q And then the manual check for IP addresses and  
21 cookie ID, when did that start?

22 A At the same time.

23 Q And for the same reason?

24 A Yes.

25 Q You say you check for matches against a

1 Exhibit 7.

2 A I believe he had two usernames at the time, at  
3 least around the same time. I'd have to look to go  
4 see exactly when. Because he had a total of three  
5 usernames, we were able to match -- Hassan Khan, Wild  
6 Audio Productions, and later Chris Kennedy, Ckenedy.  
7 The first two happened at or around the same time,  
8 Wild Audio Productions and Hassan Khan. I don't  
9 remember if when this communication was happening in  
10 May whether he already had the Hassan Khan account up  
11 or not.

12 Q Okay. And at this point what I'm interested  
13 in here is the steps in the context of May and June  
14 and I think even in July 2014 as the indicators that  
15 you had that Wild Audio Productions was Mr. Khan?

16 A I mean, if we had his ID, I assume it would  
17 have confirmed his identity, and I believe -- I don't  
18 remember.

19 Q Feel free to take your time.

20 A There's nothing I can look at here. I believe  
21 he listed his name as Hassan Khan even under Wild  
22 Audio Productions.

23 Q And you reviewed his ID and you also -- at  
24 some point -- strike that. Let's get to the --

25 (Exhibit 9 was marked.)

1 Q The court reporter has handed you Exhibit 9.

2 Do you recognize what this is?

3 A Yes.

4 Q What is this?

5 A This is an e-mail exchange between Mr. Hempton  
6 and I.

7 Q And in that -- I'll draw your attention to  
8 page 1. You note that you've done an internal  
9 investigation using IP addresses, cookie matches, and  
10 other means. And is that right that you conducted an  
11 investigation?

12 A Yes.

13 Q Okay. And we'll look at the results of that  
14 investigation in a minute. Can you tell me the  
15 investigation that Pond5 undertook once it learned of  
16 Mr. Hempton's complaint?

17 A Yeah. It's a lot of the same stuff we've  
18 talked about with searching the users' accounts and  
19 looking for the data attributes that we do track and  
20 trying to match them against other potentially  
21 red-flagged hits we have in the database.

22 Q So you did an investigation of the Ckenedy  
23 account, and at that time you determined that Ckenedy  
24 was also Mr. -- associated with the previously blocked  
25 contributor from Wild Audio Productions; is that

1 right?

2 A We believe it's likely, yes.

3 Q And upon what basis did you make that  
4 conclusion?

5 A By the fact that we did find positive matches  
6 for both IP address, cookie ID, and third case we also  
7 had a PayPal name that had the name Hassan Khan in it,  
8 which is unusual for someone to actually use their  
9 real name in PayPal actually. But in this case,  
10 Mr. Hassan Khan was not very smart in his attempts to  
11 avoid tracking.

12 Q Okay. And so -- we've printed out a copy of  
13 the spreadsheet you provided.

14 (Exhibit 10 was marked.)

15 Q Do you recognize Exhibit 10?

16 A Yes.

17 Q What is Exhibit 10?

18 A Exhibit 10 is a file that I sent to  
19 Mr. Hempton in support of the investigation, steps  
20 that we took, and to assist him in helping us  
21 determine which, if any, of his clips were infringed  
22 upon by Mr. Hassan Khan or the perpetrator and to  
23 determine what, if any, sales occurred related to the  
24 associated infringing clips.

25 Q And now we're talking about -- and the

1 account -- the Pond5 user ID is 554434; is that right?

2 A That's the same as Ckenedy342, that's right.

3 Q And is that the same user ID as used by Wild  
4 Audio Productions?

5 A No.

6 Q And so Mr. Khan -- is it your conclusion that  
7 Mr. Khan went back on the Pond5 site using the same IP  
8 address and started a new contributor account?

9 A Yeah. He logged in even just -- you can see  
10 it on this page. He logged in from several IP  
11 addresses even in the course of his ten years with  
12 Pond5, only one of which was a match to his previous  
13 IP address.

14 Q And how can I determine that from this report?

15 A You can't. You'd have to search the more than  
16 several million IP addresses we have tracked in  
17 history.

18 Q So if you had, as of summer or fall of 2014,  
19 instituted that the IP address and cookie address and  
20 name accounting systems, that you would have caught  
21 the Ckenedy account as being associated with the  
22 previously determined fraudulent account; is that  
23 true?

24 MR. ALTENBRUN: Object to form, calls  
25 for speculation.

1 Q Is that true?

2 A I believe if we had had the same policies in  
3 place, then we would have flagged it for further  
4 review.

5 Q If I could draw your attention --

6 A Just to clarify one thing if I could --

7 Q Of course.

8 A -- it's assuming, of course, on his first  
9 log-in when he signed up as a contributor that was the  
10 IP address that matched. He could have logged in at  
11 any of these subsequent IP addresses later on, and  
12 that's why we found the match because we did this,  
13 obviously, in retrospect. Only if he had signed in  
14 with that same IP address on the first log-in when he  
15 signed up for the account would we have that to match  
16 against the database.

17 Q But if you were maintaining a database of IP  
18 addresses that were associated with previously  
19 identified fraudulent activity, you would have then  
20 caught it as Mr. Kennedy or the Ckenedy username  
21 signed onto the system?

22 A We do the manual review one time when they  
23 sign up as a new contributor and they upload their  
24 first content. It's a one-time manual process. If he  
25 later, on a subsequent upload or in the ordinary

1 someone is a fraudster, is there additional review  
2 that Pond5 does based on the amount of content that's  
3 been contributed to the Pond5 system?

4 A Because of what factor?

5 Q The sheer volume of the content upload.

6 A No. I don't think there's any additional  
7 steps we would take other than reviewing the content.

8 Q And is that different in 2014 than today, your  
9 answer to that question?

10 A No. I mean, like I said, as we explained  
11 before, there's a certain amount of work that we do at  
12 the artist level, and then there's a certain amount of  
13 work that we do at the clip level. And the larger the  
14 selection of content it gets, the quicker it is to  
15 review a selection of media.

16 Q At the clip level?

17 A At the clip level.

18 Q And at the artist level, the review is the  
19 same?

20 A That's right. Well, the same regardless of  
21 how much media they contribute.

22 Q And that's changed over the course of the time  
23 relevant to this case?

24 A Not with regard to whether that they've  
25 uploaded a larger volume of clips. We are now

1 reviewing everyone regardless of whether they have  
2 uploaded 200 or 10,000. We wouldn't change that  
3 because there has been no risk factor associated with  
4 larger libraries. If anything, it's a counter risk  
5 factor. It appears to go -- the correlation goes the  
6 other way.

7 Q All right. So Mr. Khan is an exception to  
8 that correlation?

9 A Absolutely. Potentially, assuming he's a  
10 fraudster, assuming facts. I'm not allowed to object.  
11 I guess you are.

12 Q Your answer is fair. The question I asked  
13 about the change of time is that you changed your  
14 policy in the October/November 2015 time frame; right?

15 A Yes.

16 Q And that's when you start doing your  
17 additional curatorial review. And if I can understand  
18 your testimony correctly, your additional curatorial  
19 review does not change the level of investigation of  
20 the contributor based on the volume of content  
21 provided?

22 A That's right.

23 Q Let me draw your attention back to -- that's a  
24 fair question. So prior to October/November 2015,  
25 what curatorial and artist review did Pond5 conduct,

1 not at the clip level, but at the artist or  
2 contributor level?

3 A Right. I'm not aware of the full extent of  
4 the process, but I believe that the review was mostly  
5 just at the clip level previously. And only upon an  
6 incident of concern or where we've been made aware of  
7 a potential instance of infringement would we  
8 investigate at the artist level.

9 Q So drawing your attention back to Exhibit 10,  
10 which is the report you produced regarding Mr. Khan --  
11 and this is not Bates'd, but if you go to the first  
12 page regarding the user data page, so if you could  
13 describe what you see on the user data page and we're  
14 talking specifically about user ID 554434.

15 A This is the user data for Ckenedy342, also  
16 user ID 554434, and this lists several attributes that  
17 we track, including his name, the company he has  
18 purported to be representing, his e-mail address,  
19 where he resides, when the account was created, that  
20 we've confirmed the e-mail, so that's one identity  
21 check measure we do take is confirming e-mail  
22 addresses upon sign-up. And then it lists his last  
23 ten log-ins by date and the IP address that we have on  
24 file for those log-ins.

25 Q Okay. And you said you confirm e-mail

1 represent that this was taken recently from the  
2 website?

3 MR. TOWNSEND: Yes, yesterday.

4 Q Okay. And so is it an accurate statement to  
5 say that your curators are quite selective?

6 A Relative to what? I mean, honestly, this  
7 is -- there's two reasons why you say something like  
8 this. One is for marketing purposes so you get the  
9 highest quality stuff, which is important, obviously,  
10 to have the highest quality and to represent that we  
11 do have the highest quality. And the second one is  
12 when you reject someone's content, you can point to  
13 the reason why and say, sorry, we're very selective.

14 Q So but is it an accurate statement that your  
15 curators are quite selective?

16 A Honestly, I don't believe so, to be honest. I  
17 think we probably are much more liberal than our  
18 competition in letting stuff in. I can tell you that  
19 virtually everything that gets uploaded gets accepted  
20 onto our site. I wouldn't call ourselves very  
21 selective, no.

22 (Exhibit 13 was marked.)

23 Q So I'll represent for the record that this  
24 Exhibit 13 has been marked as confidential in case it  
25 doesn't come up in the copy. What is Exhibit 13?

1 in the user agreements is that you pay on the 15th?

2 A Yes.

3 Q Of every month?

4 A Exactly.

5 Q And so if you looked into the object ID and  
6 looked at the other transactions, then when you do  
7 that on the PayPal site, you can associate the  
8 Ckenedy342 with the other --

9 A That's right.

10 Q -- sites that --

11 A Well -- sorry.

12 Q The user IDs that are reflected in your  
13 analysis and spreadsheet --

14 A That's right.

15 Q -- in Exhibit 10?

16 A That's right. There will be no reason for him  
17 to actually enter in his real identification there.  
18 Most people -- I wouldn't say most people. There are  
19 lots of people who don't enter in their real  
20 identification there because, you know, it's meant to  
21 be an anonymous form of payment. So he was, in his  
22 sloppy ways, not really good at covering up his own  
23 fingerprints.

24 Q That makes sense. And would you -- so does  
25 that lead you to the conclusion that Mr. Khan is a

1 say it's a notable increase. It's been a pretty  
2 detailed search. We've gone through more than 10,000  
3 IDs since then, and we've only -- we flagged probably  
4 a couple dozen.

5 Q And so looking at Exhibit -- the payments  
6 exhibit, can you determine how much money you paid to  
7 Ckenedy342?

8 A Well, if I had a calculator, I would say --  
9 and maybe the question is better -- I actually know,  
10 so I can just tell you how much he's been paid. It's  
11 \$4,063.

12 Q And if you could grab Exhibit 8 --

13 A Or I should say \$4,063 is how much revenue is  
14 associated with his account. Half of that would be  
15 how much he was paid.

16 Q And there's some evidence that I've seen in  
17 the record, and Exhibit 8 is one of those, if you  
18 could grab that exchange. This is the CRM software  
19 with the exchange between the Ckenedy account and  
20 Ellie, customer service and curatorial liaison.

21 And what I'm interested in here is the  
22 Ckenedy user is complaining about when does he get  
23 his money, and then Ellie states on July 3 saying that  
24 there's evidence of fraud. And the one sentence here  
25 is "Because you are not in compliance with our

1 Contributor Agreement, you have essentially forfeited  
2 your balance."

3 And so is it your understanding that the  
4 balance was forfeited?

5 A We did not pay the remaining balance that he  
6 had accrued.

7 Q And do you know about how much that was?

8 A I don't.

9 Q And is it your policy that in the event of  
10 knowledge of fraud from a contributor that you forfeit  
11 the balance that the contributor had in the account?

12 MR. ALTENBRUN: Object to the form.

13 Q Does that make sense to you?

14 A Yeah. I mean, it's something we can do. I  
15 think we don't necessarily go back in time and try and  
16 recapture the money that was already paid to him. But  
17 if there's an outstanding balance -- basically,  
18 everything stops as soon as you're flagged. Not only  
19 can they not be downloaded anymore, but they also  
20 can't be paid through the normal course.

21 Q Do you know if you could go to PayPal and say  
22 give us the money back? Have you pursued that?

23 A I don't think we've ever tried. I don't think  
24 we would be very successful with that, but I don't  
25 know.

1 (Exhibit 15 was marked.)

2 Q I have a couple questions about Exhibit 15.  
3 Do you recognize the exchanges that are reflected in  
4 Exhibit 15?

5 A I recognize the type of exchanges, although I  
6 don't know if I've read these specific ones.

7 Q Describe to me what this type of exchange is.

8 A Right. So in addition to the ID verification,  
9 we did -- across all media types, we did a specific  
10 extensive investigation into all existing sound  
11 effects artists because we became aware, partly  
12 through this case, that it is the most difficult of  
13 all of our media types to be able to determine whether  
14 something online is potentially infringing work.

15 So as part of that, we put in place this  
16 additional manual process going back to all sound  
17 effects artists asking them to provide additional  
18 documentation and support of the legitimacy of their  
19 collection.

20 Q That's the same kind of exchange that you  
21 would now do on the front end; is that right?

22 A Well, yes. We do it on the front end. So all  
23 new people go through this process as well in sound  
24 effects, but this is more extensive than our overall  
25 ID verification process that I was explaining earlier.

1 This is ID verification plus that we're now doing with  
2 regard to sound effects.

3 Q And in addition to the now standardized  
4 approach that you take as of late 2015, what are the  
5 additional fraud screening you do for the sound  
6 effects?

7 A So in addition to the same ID verification, we  
8 also do, as indicated here on this front page, a link  
9 to your official website and/or web presence, for  
10 example, LinkedIn page, a full screen display of your  
11 digital audio work station and displaying your  
12 original sound file from your most recent Pond5  
13 submission.

14 So, basically, what this is -- I'll take them  
15 one at a time. The first one is saying if you're  
16 holding yourself out as a musician and actually  
17 marketing yourself as such -- because most musicians  
18 that do sound effects would do so because they also  
19 want to sell through their own independent channels  
20 and get themselves some recognition -- you will be  
21 holding yourself out as such.

22 This prevents people that are simply in the  
23 business of ripping other people off to sell to other  
24 people. It scopes out that group of people through  
25 that first test, and the second one requires an

1 about the -- so you also say that Pond5 utilizes  
2 automatic content recognition from Audible Magic to  
3 detect possible illegal improper posting of music  
4 content.

5 A Right.

6 (Exhibit 17 was marked.)

7 Q Do you recognize Exhibit 17?

8 A I've seen it before, yes.

9 Q What is it?

10 A You know, I'm not exactly sure, but I think it  
11 was part of our planning for the implementation of  
12 Audible Magic. It was probably put together by our  
13 products and content teams.

14 Q And was Audible Magic one of the safeguards  
15 that you implemented after becoming aware of  
16 Mr. Hempton's complaints?

17 A It was under -- it was planning to be  
18 implemented before the complaint. It was actually  
19 implemented after the complaint.

20 Q And do you know when this document was  
21 created?

22 A Let's see. One day of April 2015. I would  
23 guess it was probably compiled over some period of  
24 time.

25 Q And what is Exhibit 17, if you can describe

1 it?

2 A I would call this a product implementation  
3 specification. So in order to get our developers and  
4 our product team to implement this as an automated  
5 process through the site, this is the plan, basically,  
6 of that.

7 Q And how do you pay Audible Magic?

8 A If I remember right, we pay them a flat fee.  
9 It's, basically, a licensing fee for the software, and  
10 it's linked to some volume of number of tracks that  
11 we're scanning as well. So there's a fixed component  
12 and a variable component.

13 Q And there are tranches that you --

14 A As volumes get higher, the prices get a little  
15 bit lower on a variable basis.

16 Q And do they have a fraud detection software  
17 that they host on their own website?

18 A Yeah. It's kind of a duplicate detection  
19 system of their own, and it matches against a very  
20 large library, not just our library, but it matches  
21 against their library. If you're an artist,  
22 particularly a musician, it's one of two major  
23 databases that you would register with to make sure  
24 that companies like us are able to be able to search  
25 against it to figure out whether there are matching

1 things.

2 Q Do you know who Audible Magic's competitor is  
3 or the other database that you referenced?

4 A I think it's the YouTube version. What's it  
5 called? I don't remember the name of it. YouTube has  
6 their own content recognition platform.

7 Q When you're dealing with Audible Magic, do  
8 they have a kind of bronze, silver, gold-type  
9 standard, or is there a just one off-the-shelf product  
10 that they provide?

11 MR. ALTENBRUN: Objection, beyond the  
12 scope.

13 A No. There's one offering.

14 Q It's just Audible Magic, yea or nay?

15 A Yeah.

16 Q And there's a reference here that Audible  
17 Magic is not used for sound effects content like  
18 Mr. Hempton's; right?

19 A That's right.

20 Q And why is that?

21 A Because sound effects are not typically  
22 registered under Audible Magic or the competing  
23 content verification system.

24 Q I see. So their library to check against is  
25 not as great?

1 A It doesn't include sound effects.

2 Q And there's quite a few references  
3 specifically in this document. Let's kind of go  
4 through it, and I notice, in particular, there are  
5 references to Ckenedy, for example, on the document  
6 Bates Pond 302. Do you see that reference?

7 A Yes.

8 Q So is it their representation that their fraud  
9 detection would have caught fraud that came from  
10 Ckenedy342?

11 A No.

12 MR. ALTENBRUN: Object to the form and  
13 lack of foundation.

14 Q You say no?

15 A No.

16 Q Why is that? Why do you say that?

17 A Well, so let me go back. So what they're  
18 talking about here is additional ID verification  
19 steps. This is not in reference to the Audible Magic  
20 anymore. This is a separate document.

21 Q Okay. So Audible Magic is --

22 A The first few pages here, and then when you  
23 get to this page --

24 Q When you say "this page," what do you mean?

25 A This page, Pond 300.

1 Q Let's stop at 292. Is that -- excuse me.  
2 298.

3 A 298, that's the Audible Magic specification.

4 Q Okay.

5 A But then you are referencing Pond 300, which  
6 is part of the content audit specification, which is a  
7 different specification.

8 Q So who created this document?

9 A This particular one actually was created by  
10 Mike Pace, our audio manager, but it actually goes  
11 above and beyond audio. This is across all media  
12 types.

13 Q So this is a description of the photo ID and  
14 some of the other things that you've talked about?

15 A Basically, all measures we're taking -- I  
16 don't mean all measures, but a summary, a broad  
17 overview of the measures we're taking during the first  
18 half of this year to reduce risk in the content  
19 collection.

20 Q I see. And in this document, Mr. Pace --  
21 correct me if I'm wrong -- sets up a sort of  
22 cost-benefit analysis versus the cost of a deterring  
23 risk versus the benefit of deterring risk and fraud;  
24 is that a fair statement?

25 MR. ALTENBRUN: Objection, document